

FILED**MAR 21 2013**U.S. Court of Appeals
Fourth Circuitcp
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U.S. COURT OF APPEALS
FOURTH CIRCUITDerek Bynum
Reg. No. 38356-037
LSCI Allenwood
P.O. Box 1000
White Deer, PA 17887

March 18, 2013

Clerk's Office
U.S. Court of Appeals
For the Fourth Circuit
1100 East Main St., Suite 501
Richmond, VA 23219Re: United States Of America v. Derek Bynum
C.A. Nos.: 07-4059, 07-4060, 07-4062, 07-4063, 07-4080, 07-4115

Dear Clerk of Court,

I write to request a copy (or the original) of the Joint Appendix in the above referenced appeal. I was the Appellant in this appeal and was represented by court appointed counsel, Mr. Timothy Mitchell. Under the Criminal Justice Act ("CJA").

I have requested a copy of the Joint Appendix (or the original) from Mr. Mitchell. See Exhibit 1. In response, Mr. Mitchell sent me an order from the District Court denying my request for a copy of the transcript (without a cover letter). See Exhibit 2. To be clear, I was not requesting a copy of the entire trial transcript but only the Joint Appendix that I was entitled to as part of my appeal.

I then sent a letter to the District Court seeking an order to obtain the Joint Appendix from Mr. Mitchell. See Exhibit 3. In response to my request, I received a letter from the District Court Clerk that stated in part:

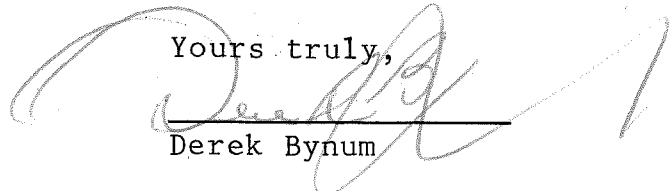
"Judge Titus has forwarded your letter concerning obtaining your joint appendix. Please be advised that the joint appendix is a document belonging to the record of the United States Court of Appeals for the Fourth Circuit and is not a document of this Court. As such, we cannot provide additional information. Please direct your inquiry to the following address:"

See Exhibit 4.

Pursuant to the direction given to me by the District Court Clerk I respectfully request that this Court provide me with either a copy or the original of the Joint Appendix in my appeal, or order Mr. Mitchell to provide me with a copy of the original of the Joint Appendix that I was entitled to in the first place (which was never provided to me.)

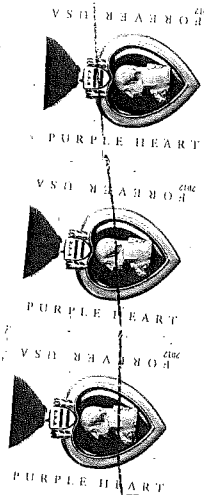
I can be contacted in writing at the address above this letter. Thank you for your kind consideration of this matter.

Yours truly,


Derek Bynum

cc: T. Mitchell, Esq.

Derek Bynum - 38356-037
 Low Security Correctional
 Institution - Allenwood
 P.O. Box 1000
 White Deer, PA 17887



MAR 21 2013

38356-037

CLERK US COURT OF APPEALS
 US Courthouse 5th Floor
 1100 EAST MAIN Street
 Richmond, VA - 23219
 United States

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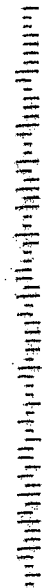


EXHIBIT 1

Derek Bynum
Reg. No. 38356-037
LSCI - Allenwood
P.O. Box 1000
White Deer, PA 17887

Mitchell Law Firm
6301 Ivy Lane
Suite 400
Greenbelt, MD 20770

Re: United States v. Derek Bynum
Case No. ~~AWT~~-04-0235

Dear Mr. Mitchell,

I have reviewed the joint brief of Appellates that you submitted on my behalf in the above captioned case. The joint appendix referred to in the brief was not attached. Would you please forward to me either a copy or the original of the joint appendix. I am in the process of preparing my 28 USC 2255 Petition and need the joint appendix which I was entitled to from my direct appeal.

Thank you for your kind consideration of this matter.

Yours Truly,

Derek Bynum

EXHIBIT 2

Case 8:04-cr-00235-RWT Document 1529 Filed 07/10/12 Page 1 of 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

UNITED STATES OF AMERICA**v.****DERREK LEWIS BYNUM**

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Criminal Case No.: RWT 04-cr-235-7

ORDER

On April 20, 2012, the Defendant filed a Motion for Copy Work at the Expense of the United States. *See* ECF No. 1503. On June 5, 2012, this Court granted the Defendant's Motion for Copy Work because the deadline for the Government to respond to the Defendant's motion was May 7, 2012 and no opposition to Defendant's motion had been filed. *See* ECF No. 1520. On June 11, 2012, the Government filed a Motion for Reconsideration. *See* ECF No. 1523. On June 25, 2012, Defendant filed a Motion to Strike Government's Motion for Reconsideration. *See* ECF No. 1528. For the reasons that follow, the Government's Motion for Reconsideration [ECF No. 1523] will be granted, and the Defendant's Motion to Strike Government's Motion for Reconsideration [ECF No. 1528] will be denied.

Defendant requested the transcripts to "properly prepare my case" and "prepare a post-conviction appeal." *See* ECF No. 1503; ECF No. 1528 ¶ 6. Because the Defendant's conviction and sentence were affirmed by a mandate issued on November 30, 2011, the only case Defendant could be preparing is a petition under 28 U.S.C. § 2255. Defendant has not filed such a petition.

Case 8:04-cr-00235-RWT Document 1529 Filed 07/10/12 Page 2 of 2

Under Fourth Circuit law, a defendant is not entitled to obtain documents or other materials at government expense absent a showing of a particularized need. *See United States v. Shoaf*, 341 F.2d 832, 833-834 (4th Cir. 1964) (ruling there is no entitlement to free transcript merely for examination to determine whether to engage in litigation or to “comb the record in the hope of discovering some flaw”); *Bozeman v. United States*, 354 F. Supp. 1262 (E.D. Va. 1973) (holding federal prisoner must state claim of constitutional dimension which is neither frivolous on its face nor rendered moot under the law by other applicable doctrines, and must specify with clarity those portions of the proceedings questioned to permit an initial determination of relevance to be made by district court).

The Defendant has not shown a particularized need. This is because Defendant has not filed a petition under 28 U.S.C. § 2255 or set forth specific factual allegations in support of the forthcoming § 2255 motion which show (1) the § 2255 claim is non-frivolous and (2) the transcripts are needed to decide the issues to be raised in the § 2255 motion. *See* 28 U.S.C. § 753(f).

Accordingly it is, this 9th day of July, 2012, by the United States District Court for the District of Maryland,

ORDERED, that the Government’s Motion for Reconsideration [ECF No. 1523] is **GRANTED**; and it is further

ORDERED, that the Defendant’s Motion to Strike Government’s Motion for Reconsideration [ECF No. 1528] is **DENIED**.

/s/

ROGER W. TITUS
UNITED STATES DISTRICT JUDGE

EXHIBIT 3

Derek Bynum
Reg. No. 38356-037
LSCI - Allenwood
P.O. Box 1000
White Deer, PA 17887

Honorable Roger Titus
United States District Judge
United States District Court
District of Maryland
6500 Cherry Wood Lane
Greenbelt, Maryland 20770

January 17, 2013

Re: United States v. Derek Bynum
Criminal Case No. RWT-cr-235-7

Dear Judge Titus,

I write to request that the Court order Mr. Mitchell (my former attorney in this matter and direct appeal) to provide me with the joint appendix that was submitted to the Fourth Circuit Court of Appeals. I have written to Mr. Mitchell to obtain the Joint Appendix. In response he sent me this Court's order denying my request for copies of the transcript. See Exhibit "A", Bynum's Letters to Mitchell and Exhibit "B", Mitchell's Envelop with the Court's Order.

To be clear I have not asked Mr. Mitchell for copies of the transcripts which was the subject of my prior request that the Court denied based upon the government's motion for the Court to vacate its previous order granting my request for transcripts. I was entitled to a copy of the appellate brief and all supporting documents attached to that brief as part of my direct appeal.

I received a copy of the brief filed by Mr. Mitchell on my behalf but did not receive the joint appendix.

It is Black Letter Law that my legal files in Mr. Mitchell's possession belong to the "client", Derek Bynum.

Moreover, I have not requested that the Court order the government to pay for the joint appendix. The joint appendix already exists and is in Mr. Mitchell's possession.

Accordingly I respectfully request that the Court order Mr. Mitchell to provide the joint appendix to me that I was entitled to as a matter of right in the first instance of the direct appeal.

Thank you for your kind consideration of this matter.

Yours truly,

Derek Bynum

cc: Mr. Mitchell

EXHIBIT 4



UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
OFFICE OF THE CLERK

Reply to Southern Division Address

Felicia C. Cannon, Clerk of Court
Jarrett B. Perlow, Chief Deputy
Elizabeth B. Snowden, Chief Deputy

April 12, 2012

Mr. Derek Bynum, #38356-037
LSCI-Allenwood
P.O. Box 1000
White Deer, PA 17887

Re: *United States of America v. Derek Bynum*
Criminal Case No. RWT 04-235
Request for Joint Appendix

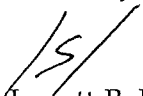
Dear Mr. Bynum:

Judge Titus has forwarded your letter concerning obtaining your joint appendix. Please be advised that the joint appendix is a document belonging to the record of the United States Court of Appeals for the Fourth Circuit and is not a document of this Court. As such, we cannot provide additional information. Please direct your inquiry to the following address:

Clerk's Office
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219-3525

For your reference, I am returning your materials to you.

Sincerely,


Jarrett B. Perlow
Chief Deputy Clerk

Encl.

cc: Judge Roger W. Titus